

And I am also of opinion, that the record contains sufficient evidence to exempt this claim from the plea of limitations. I place the exception upon the proof and not upon the act of 1849, ch. 224, which I regard as prospective.

2d. I do not think claim No. 2, exhibit B., has been sufficiently proved in opposition to the plea of *non est factum*. The execution of the paper by the alleged debtor, might be proved without calling the subscribing witness under our act of Assembly, but in this case, such execution is not proved at all, and the claim must be rejected.

3d. As to claims numbered 3 and 5, I am of opinion, the claimants cannot, as against the real estate claim more than they were allowed against the personal estate. Suppose, instead of a reduction of the claim in the Orphans Court, and in a contest with the personal representative, the entire demand had been defeated and the creditor had acquiesced in the result, could he afterwards set up the same claim as against the real estate? I apprehend he could not. The personal representative of the deceased debtor, in whose hands are supposed to be the papers and vouchers of the deceased, is the person selected by the law to carry on these controversies, and if a claimant is defeated, wholly or partially, in such a controversy, it appears to me, he should not afterwards be permitted to renew the contest with those not so well prepared to make a defence. It is said the administrator was not bound to pay, though the Orphans Court passed the claim in part, and this is true. Neither was the creditor bound to acquiesce in the judgment of that court, nor to receive his dividend, but as both parties have thought proper to acquiesce, the question is, whether the creditor can be suffered to litigate the same matter again with parties who have not the custody of the papers of the deceased, and consequently are less competent to defend themselves. It is admitted, there is no proof in support of the cash items contained in these accounts, and there is, moreover, upon their face a concurrence and coincidence of amounts, both as to the value of the negro hire and the amount of the cash lent which is rather remarkable. My opinion, then, is, that they can be allowed for no more than was allowed in the Orphans Court. It is, I think, no answer to say,